

Docket: 2007-3516(IT)I

BETWEEN:

ARTHUR ST-PIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on February 11, 2008, at Chicoutimi, Quebec  
Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Berthold Tremblay

Counsel for the Respondent: Anne Poirier

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**JUDGMENT**

The appeal from the assessment established under the *Income Tax Act* for the 2005 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 22nd day of April 2008.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 29th day of May 2008.  
Elizabeth Tan, Translator

Citation: 2008TCC209  
Date: 20080422  
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ARTHUR ST-PIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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**REASONS FOR JUDGMENT**

Tardif J.

[1] This is an appeal from an assessment that was based on a T5 form, issued in the Appellant's name attesting that \$12,500.93 in interest was calculated in the Appellant's file with the Régie des rentes du Québec.

[2] The facts are well described at paragraph 7 of the Reply to Notice of Appeal, and were admitted by the accountant who represented the Appellant. They are reproduced here:

[TRANSLATION]

- (a) According to the Minister's records, the Appellant received and declared social assistance benefits during the 1993 and 2004 taxation years under paragraph 56(u) of the *Income Tax Act*, R.S.C. (1985), c. 1 (5th suppl.) amended (hereinafter the "Act") and claimed a deduction under paragraph 110(1)(f) of the Act as follows:

<u>Year</u>	<u>Benefit</u>	<u>Deduction</u>
2004	\$9,384	\$9,384
2003	\$9,207	\$9,207
2002	\$9,060	\$9,060
2001	\$8,828	\$8,828
2000	\$8,610	\$8,610
1999	\$8,471	\$8,471
1998	\$8,394	\$8,394
1997	\$8,245	\$8,245
1996	\$8,122	\$8,122
1995	\$7,932	\$7,932
1994	\$8,040	\$8,040
1993	\$5,590	\$5,590
TOTAL	<u>\$99,883</u>	<u>\$99,883</u>

(b) By letter dated September 29, 2005, the Régie des rentes du Québec (hereinafter the "RRQ") advised the Appellant that it recognized he had been disabled since July 1994 and could pay him a disability benefit of around \$518 a month as of November 1994;

(c) For the 2005 taxation year, the RRQ issued the Appellant T4A forms, "Statement of Benefits from the régime de rentes du Québec" (hereinafter the "T4A") indicating "taxable RRQ benefits" for \$75,094.56 and \$1,237.28 respectively;

(d) The T4A indicating the total amount of \$75,094.56 in disability benefits owed to the Appellant between 1994 and 2005, provided the following details:

<u>Year</u>	<u>Amount</u>
2005	\$7,596.00
2004	\$7,469.04
2003	\$7,237.44
2002	\$7,123.44
2001	\$6,915.96
Other	<u>\$38,752.68</u>
TOTAL	<u>\$75,094.56</u>

(e) For the 2005 taxation year, the RRQ calculated interest on the benefits owing for a total of \$12,500.93;

(f) As a result, the RRQ issued a T5 form to the Appellant, a "Statement of investment income" (hereinafter the "T5") indicating interest from a Canadian source in the amount of \$12,500.93 for the 2005 taxation year;

(g) For the 2005 taxation year, the Ministère de l'Emploi, de la Solidarité sociale et de la Famille (hereinafter the "MESSF") issued a T5007 form, "Statement of Benefits" to the Appellant (hereinafter the "T5007") indicating an amount of \$7,064.72 as social assistance benefits;

(h) Considering that as of November 29, 2005, the Appellant had a balance of \$86,966.76 owing with the MESSF, the RRQ sent it \$86,962.49 (see detail in Annex), as a partial reimbursement of the amount owing;

(i) The Minister calculated the Appellant's total income, net income and taxable income for the 2005 taxation year as follows:

<b>DESCRIPTION</b>	<b>Amount</b>
RRQ benefits	\$8,896
Investment interest income	\$12,500
Social assistance benefits	<u>\$7,604</u>
<b>Total income</b>	<b><u>\$29,000</u></b>
<b>Net income</b>	<b><u>\$29,000</u></b>
Deduction for other payments	<u>\$7,604</u>
<b>Taxable income</b>	<b><u>\$21,396</u></b>

(j) Considering the Appellant had included a T1198 form (Statement of Qualifying Retroactive Lump Sum Payments) with his 2005 income tax report, the Minister preceded with a retrospective calculation that was most beneficial for a lump sum payment, for the Appellant's 2005 taxation year, for the amount of \$75,094.56;

(k) In his income tax return for the 2005 taxation year, the Appellant claimed \$12,500 as other deductions;

(l) The Minister denied the \$12,500 as other deductions for the Appellant's 2005 taxation year.

[3] Only the agent for the Appellant testified. He explained that he had been in charge of the Appellant's case for quite a while. He stated he did everything he could to avoid the assessment, in particular by trying to obtain the right to amortize the interest that appeared on the T5 over all the years of the period in question, from 1993 to 2004.

[4] After this option was denied, he stated he did not understand because the procedure had been accepted for the capital with no problems.

[5] The testimony of the agent for the Appellant is well summarized in his Notice of Appeal. The relevant passages in paragraphs 2 and 3 are reproduced here:

[TRANSLATION]

In 2005, the régie des rentes reimbursed the local employment center of the Ministère de l'Emploi, de la Solidarité sociale et de la famille (MESSF) \$86,942.49 including \$12,500.93 in interest, following an administrative procedure that allowed the MESS to claim amounts from the RRQ that I could receive as of 1994, when I had the choice between either part of the RRQ or 100% welfare.

The \$12,500 in interest was paid directly to the MESSF. Mr. St-Pierre did not receive any of this interest. Revenue Canada refused the deduction claimed for this interest for amounts payable to the MESSF since 1994.

[6] The auditor explained that he essentially handled the case in accordance with the provisions of the *Income Tax Act* (the "Act"), namely that the amount of interest (T5 form) was calculated as income for the Appellant, in whose name the form had been prepared. He also added that interest was taxable for the year in question on the T5.

[7] This is a completely anomalous situation, where it is clear that certain stakeholders set up one or many procedures likely to bolster the image of their administration and management without being concerned for the consequences for the Appellant.

[8] The situation can be simply summarized as follows. The Appellant, deprived of income, collected social assistance benefits for a number of years. At 60, he should apply for a disability pension rather than social assistance benefits. Thus, the authorities realized he could have obtained a disability pension instead of social assistance benefits.

[9] The relevant Minister prepares a claim and initiates legal proceedings against the Appellant, to be reimbursed for all the amounts paid to him as social assistance benefits.

[10] The régie des rentes du Québec ("RRQ") recognizes that the disability pension was payable to the Appellant and reimburses the welfare benefits to the Payor. Upon request by the agent for the Appellant, the amount of the

reimbursement is distributed over the number of years in question, namely from 1993 to 2004, therefore avoiding any income tax payable by the Appellant.

[11] However, a T5 form was issued to the Appellant regarding interest that was paid to the MESSF, for the many years in question that had passed. The Minister still treated the T5 as taxable interest income for the Appellant in the year it was issued. These operations between the two ministries did nothing positive for the Appellant. The Appellant did not benefit or profit from the interest amount in question as the entire amount was directed to the ministère des affaires sociales that had paid social assistance benefits during the period of 1993 to 2004.

[12] In terms of the provisions of the Act, the auditor explained that the agency had to treat it this way even if the capital subject to the calculation was, in his opinion, distributed over the many years in question thus having no impact; as for the capital, it was a significant amount of \$75,094.56.

[13] This is clearly a very particular case not only because it is obvious the Appellant is unable to pay the amount no matter how small it is, but he also had to face many administrative hurdles (legal claim, multiple correspondences, tension). Luckily for him, his accountant Mr. St-Pierre protected him to a certain extent. Moreover, he represented him well before the Court.

[14] Regarding the particular circumstances, I strongly suggest that the authorities take into consideration the various elements that characterize this case and forego collecting this assessment. Moreover, Parliament allowed for the state to be able to cancel such a claim (*Financial Administration Act*, R.S.C. (1985), c. F-11, subs. 23(2)).

[15] As for the T5 at the basis of the assessment, it seems to me that the situation should be revised so as to avoid that disadvantaged persons, already overwhelmed by life are not required to fight to get out of situations where they are innocent victims with no contribution by them. Administrative transparency should not take place at the expense of disadvantaged persons with no resources.

[16] In terms of the assessment under appeal, it seems it was established in accordance with the provisions of the Act, which clearly means that it must be confirmed and the appeal must be dismissed.

[17] However, it is clearly a case that Parliament had in mind when it stated at section 23(2) of the *Financial Administration Act*, R.S.C. (1985) C. F-11, s.23 – Definitions:

**23.(2) Remission of taxes and penalties**– The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

Signed at Ottawa, Canada, this 22nd day of April 2008.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 29th day of May 2008.

Elizabeth Tan, Translator

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COURT FILE No.: 2007-3516(IT)I

STYLE OF CAUSE: ARTHUR ST-PIERRE AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Chicoutimi, Quebec

DATE OF HEARING: February 11, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: April 22, 2008

APPEARANCES:

Agent for the Appellant: Berthold Tremblay

Counsel for the Repondent: Anne Poirier

COUNSEL OF RECORD:

For the Appellant:

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